

LEGAL STATUS OF HOSPITAL RECORDS

The Neurological Institute asked the opinion of the Academy on the status of hospital records. A series of questions were formulated by the Neurological Institute and in view of its wider experience the questions were forwarded to the American Medical Association.

The questions and the answers of the Bureau of Legal Medicine and Legislation of the American Medical Association are as follows:*

1. *How much of the clinical record on ward patients is subject to subpoena by the courts?* Answer.—I know of no basis for drawing a distinction between the right of the courts to subpoena the clinical records of ward patients and the right of the courts to subpoena clinical records of private patients. The record of either class may be subpoenaed so far as such records are material and pertinent to the issues before the court. Probably this is true with respect even to records covered by the statutes forbidding the introduction of privileged communications in evidence, even though such records *could not be admitted in evidence after they had been produced in court in response to the subpoena*. In any event, it would be unwise for an officer of a hospital served with a subpoena commanding him to produce the records in any case to decline to respond to that subpoena and to produce the records, unless he was willing to assume the burden of determining whether such records were or were not admissible and contesting the issue, if he should be adjudged in contempt, by habeas corpus proceedings and appeals to the higher courts. The proper course, in such a case, it seems to me, would be to produce the records and leave the judge to determine whether they are or are not admissible.

2. *Are any of the records contained in the chart of the patient considered as given in confidence, and is such confidence protected by the courts?* Answer. It may be stated as a general rule that where the information recorded on a chart represents a privileged communication between the physician and the patient, within the meaning of the statute governing privileged communications in the jurisdiction where the question arises, and if the patient has not expressly or by implication waived his privilege of secrecy, the record will to that extent be regarded as privileged.

3. *Are the records of private patients considered to be the property of the private physician taking care of them in the hospital, or are the records considered to be the property of the hospital?* Answer. So far as I know, no court has passed on the ownership of the clinical records of hospital patients, either of private patients or of any other class. The matter of ownership might be governed by express agreement in any particular case,

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provided the agreement was entered into before the patient entered the hospital. In the absence of an express agreement it is presumably governed by the rules of the hospital; a patient entering a hospital and a physician undertaking to treat a patient in a hospital may be presumed to agree to abide by such rules when they enter the hospital premises. In the absence of an express agreement and of hospital rules, the courts would probably follow the established universal or near-universal custom with respect to the matter. That custom would, it seems to me, constitute the hospital as owner of such records *as trustees for the benefit of the patient*. I am by no means sure that the attending physician has any right in the records after he has discontinued attendance on the patient, unless there is some express agreement giving him that right.

4. *What parts of these records are considered to be given in confidence and therefore not subject to legal review or to be used in evidence?* Answer.—Just what is intended by the phrase “legal review or to be used in evidence,” is not clear. The extent to which the recorded data are protected from disclosure in court depends on the law governing privileged communications in the jurisdiction where an effort is being made to compel such disclosure.

This, of course, is a question somewhat different from the use of hospital records in evidence, a matter that involves questions of hearsay, authentication, etc., that can hardly be discussed satisfactorily within the compass of a letter.

5. *Are x-ray films taken of private patients considered to be a part of the hospital record, or are they the property of the private patients?* Answer.—Roentgenograms of hospital patients taken in the course of diagnosis and treatment in the hospital are, in my judgment, a part of the hospital records, and I can see no reason for regarding them in any other way, although I know of no court decision of any court of appellate jurisdiction bearing on this point. With respect to the ownership of such records, whether taken in a hospital or elsewhere, your attention is invited to an article in the *Journal of the American Medical Association*, June 18, 1927, 88: 1985-1986.